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Martin A. Mooney, Esq. (MM 8333)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: February 24, 2009  
Hearing Time: 10:00 a.m.

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SECURITIES INVESTOR PROTECTION  
CORPORATION,  
Plaintiff,  
v.

**NOTICE OF MOTION FOR RELIEF  
FROM AUTOMATIC STAY PURSUANT  
TO 11 U.S.C. SECTION 362(d)(1)**

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,  
Defendant.

Case No. Ad. Pro. No. 08-01789 (BRL)  
SIPA Liquidation

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SIRS:

PLEASE TAKE NOTICE that upon the Motion for Relief from Automatic Stay pursuant to 11 U.S.C. Section 362(d)(1) and the Order Extending the Stays Against All Creditors signed by the Hon. Burton R. Lifland on January 5, 2009, of creditor, DCFS USA LLC subservicer for Daimler Trust, dated February 3, 2009, the undersigned will move at a hearing to be held at the United States Bankruptcy Court, U.S. Courthouse, Courtroom 623, One Bowling Green, New York, New York on the 24th day of February, 2009 at 10:00 a.m. of that day, or as soon thereafter as counsel can be heard, for an Order, pursuant to 11 U.S.C. Section 362(d)(1), granting such creditor relief from automatic stay, and for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9006-1, Local Rules of Bankruptcy Practice for the Southern District of New York, answering papers and memoranda of law, if any, must be filed with the Court and served upon the undersigned so as to be received by the undersigned no later than three (3) days before the return date of this motion.

DATED: February 3, 2009  
Albany, New York

Yours, etc.

/s/ Martin A. Mooney  
Martin A. Mooney, Esq.  
DEILY, MOONEY & GLASTETTER, LLP  
Attorneys for Creditor  
DCFS USA LLC subservicer for Daimler Trust  
8 Thurlow Terrace  
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Tel. (518) 436-0344

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TO:

Irving H. Picard, Esq. (Trustee)  
Baker & Hostetler, LLP  
45 Rockefeller Plaza  
New York, NY 10111

Office of the U.S. Trustee  
33 Whitehall Street, 21st Floor  
New York, NY 10004-2112

Securities Investor Protection Corporation  
Attention: Kevin H. Bell  
805 15th Street, N.W. Suite 800  
Washington, DC 20005-2215

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SECURITIES LLC,  
Defendant.

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DCFS USA LLC subservicer for Daimler Trust, by its counsel, DEILY, MOONEY &  
GLASTETTER, LLP as and for a Motion for Relief from Automatic Stay pursuant to 11 U.S.C.  
Section 362(d)(1) and the Order Extending the Stays Against All Creditors signed by the Hon. Burton  
R. Lifland on January 5, 2009, states the following as grounds therefor:

1. On December 11, 2008, The Securities and Exchange Commission filed a complaint in U.S. District Court for the Southern District of New York against defendants Bernard L. Madoff and Bernard L. Madoff Investment Securities, LLC (08CV 10791).
2. On December 11, 2008, an order was entered transferring Case No. 08CV 10791 from U.S. District Court, Southern District New York to United States Bankruptcy Court, Southern District of New York, Nature of Suit SIPA Liquidation, Case No. Ad. Pro. 08-01789 (BRL).
3. On December 18, 2008, Judge Stanton issued an Order on Consent Imposing Preliminary Injunction, Freezing Assets and Granting Other Relief Against defendants.

4. On January 5, 2009, this Court entered Order Extending the Stays Against All Creditors, affirming that the automatic stay under section 362 of the Bankruptcy Code is effective in this case from and after December 11, 2008 filing date and extending the stays against all creditors of the debtor and all other persons as provided for in paragraphs VI and VII of the Protective Decree from and after January 5, 2009, until further order of this Court.

5. The Court has jurisdiction to entertain this motion under 28 U.S.C. Section 157.

6. DCFS USA LLC subservicer for Daimler Trust (hereinafter "DCFS USA LLC") is the record owner of one (1) 2009 Mercedes S550V4 (V.I.N. WDDNG86X49A254361) (hereinafter "vehicle"). A copy of the Certificate of Title is annexed hereto as Exhibit "A" and made a part hereof.

7. Pursuant to 11 U.S.C. Section 362 and the January 5, 2009 Order Extending Stay Against All Creditors, upon the commencement of the instant bankruptcy case, DCFS USA LLC is stayed from taking any action against the defendant to obtain possession of the leased property.

8. On October 31, 2008, Rallye Motors (hereinafter "dealer"), as lessor and the defendant, as lessee, entered into a Motor Vehicle Lease Agreement (hereinafter "Lease") pursuant to which the defendant leased the vehicle from the dealer at the rate of \$1,712.14 per month for a term of thirty-six (36) months, commencing on October 31, 2008. A copy of the Motor Vehicle Lease Agreement is also annexed hereto as Exhibit "A" and made a part hereof.

9. Pursuant to the terms and provisions thereof, and for good and valuable consideration, the Lease was duly assigned by the dealer to DCFS USA LLC, which is now the holder and owner of same. As of January 27, 2009, the defendant was in default of the payment obligations to DCFS USA LLC pursuant to the terms and conditions of the Lease Agreement, as follows:

- a. Gross balance due: \$58,212.76
- b. Post-petition arrears: \$1,712.14 for the months of January, 2009, together with applicable late charges.

(**NOTE:** The foregoing does not represent any amounts which may be due for costs and attorneys' fees as may be allowed by the Court.)

10. The agreed upon value of the vehicle at the time of signing the Lease was EIGHTY-FOUR THOUSAND and 00/100 (\$84,000.00) DOLLARS.

11. Pursuant to the terms and conditions of the Lease Agreement, upon the failure of the Lessee to cure any default thereunder, which include non-payment of rental charges, DCFS USA LLC is entitled to immediate possession of the vehicle.

12. Upon information and belief, the defendant has surrendered the leased property.

13. It is respectfully asserted that DCFS USA LLC's interest in the vehicle will not be adequately protected if the automatic stay is allowed to remain in effect.

14. Accordingly, sufficient cause exists to grant DCFS USA LLC relief from the automatic stay herein, which includes, but is not limited to, the following:

- a. The defendant is in default under the terms and provisions of the Lease Agreement by, among other things, failing to make the monthly payments due thereunder;
- b. The ownership interests of DCFS USA LLC with respect to the vehicle are not adequately protected as envisioned under 11 U.S.C. Section 361;
- c. The vehicle, by its intrinsic nature, is mobile, thereby subject to the foreseeable possibility of injury thereto by way of accident or collision.

15. It is respectfully submitted that DCFS USA LLC is in a more advantageous position to obtain an optimum price for the sale of the vehicle, thereby increasing the possibility of avoiding a deficiency balance on this account, thereby removing such creditor as a potential unsecured claimant in this case.

16. No prior application for the relief requested herein has been made.

WHEREFORE, DCFS USA LLC subservicer for Daimler Trust respectfully requests that the Court issue an Order, pursuant to 11 U.S.C. Section 362 granting DCFS USA LLC relief from automatic stay in order to dispose of its property, and for such other and further relief as to the Court may seem just and proper.

DATED: February 3, 2009  
Albany, New York

DCFS USA LLC SUBSERVICER FOR  
DAIMLER TRUST  
By Its Counsel

/s/ Martin A. Mooney  
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